

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Mark G. Fleischhacker
 Serial No. : 09/770,342
 Filing Date : January 26, 2001
 Examiner : Charles Alan Marmor, II
 Group Art Unit: 3736
 For : Non-Metallic Guidewire
 Confirmation No.: 6291

CERTIFICATION OF SUBMISSION

I hereby certify that, on the date shown below, this correspondence is being transmitted via the Patent Electronic Filing System (EFS) addressed to Examiner Marmor at the U.S. Patent and Trademark Office.

Date: January 10, 2007 Stacy Hittner

Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

RESPONSE

Sir:

This is in response to the Examiner's Office Action mailed August 10, 2006, in the above-identified patent application. Applicant believes that a four-month extension of term is required. Please charge the required fee (large entity) to Account No. 23-2053. If an additional extension is required, please consider this a petition therefor, and charge the required fee to Account No. 23-2053.

In the August 10, 2006 Office Action, a Restriction Requirement was imposed in which each of the six Figures of the Application were alleged to comprise "patentably distinct species".

The above-imposition of a Restriction Requirement is respectfully traversed. In the first instance, this Application was filed in 2001. All six Figures of this Application have been present since its filing date. Now, in August 2006, the Office has seen fit to impose a Restriction Requirement. Imposition of a Restriction Requirement after five years of prosecution is unfair to the Applicant, and certainly is not consistent with the orderly disposition of pending applications.

Nevertheless, the August 2006 Restriction Requirement has been imposed. In addition to the above-suggested procedural issues, 35 U.S.C. § 121 states in pertinent part:

If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to amend of the inventions....

Nothing in the Office Action suggests the presence of what “independent and distinct inventions” as is required by § 121. Clearly, “patentably distinct species”, as is set forth in the Office Action, is not the statutory test for imposition of a Restriction Requirement. These claims have, in fact, been prosecuted as a group for the last five years. Now suddenly, by application of a non-statutory test, six inventions are alleged to be present. This simply does not make sense. Applicant urgently and strenuously requests withdrawal of the Restriction Requirement, refund of all fees associated with this paper, and examination of all claims on the merits in accordance with orderly patent prosecution.

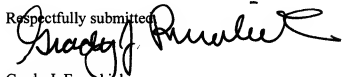
Election/Response to Restriction Requirement

Over objection, Applicant elects the “species” of Fig. 1, and associated independent claim 1 and dependent claims 2, 4, 6, 7, 8 and 9 which read thereon. Applicant reserves the right to argue for rejoinder of all claims should that be necessary.

Request that Application Be Deemed “Special”

This Application is now more than five years in prosecution. We ask that it immediately be designated “special” and be examined out of order so that Applicant’s rights may be identified and perfected while some term remains for any issued patent.

Respectfully submitted,



Grady J. Frenchick
Reg. No. 29,018

Dated: January 10, 2007.